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September 21, 1998

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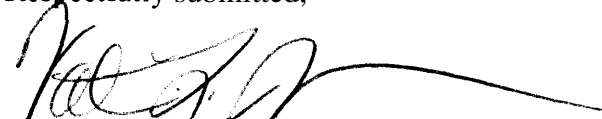
Docket Clerk  
U.S. Department of Transportation  
Federal Highway Administration  
400 Seventh Street, S.W., Room PL-401  
Washington, DC **20590-000 1**

Re: Out-of-Service Criteria, FHWA Docket No. FHWA-98-3414 -17

Dear Docket Clerk:

On September 18, 1998 the National Tank Truck Carriers, Inc. (NTTC) submitted comments in response to the advance notice of proposed rulemaking issued July 20, 1998 in the above-referenced proceeding. 63 Fed. Reg., 38,791 (1998). Attached to NTTC's filing was the affidavit of Mr. James Bucko. The original of the attestation page to Mr. Bucko's affidavit was not available in Washington on the filing date. The original is enclosed herein for inclusion in the record.

Respectfully submitted,



Kathleen L. Mazure  
Attorney for  
National Tank Truck Carriers, Inc.

Enclosure

NTTC Buck original aff. doc

RECEIVED OF TRANSPORTATION  
98 SEP 21 PM 2:25  
DOCKET SECTION

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION**

**Out-of-Service Criteria**

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**Docket No. FHWA-98-3414**

**AFFIDAVIT  
OF JAMES BUCKO**

My name is James Bucko, and I am employed in the capacity of the Director of Safety of Rogers Cartage, of Crestwood, Illinois.

Rogers Cartage is a member of the National Tank Truck Carriers, Inc., and is engaged in the transportation of materials by tank truck throughout the United States.

The company operates 300 tractors and 529 trailers, and we transport all types of liquid bulk cargo, including hazardous materials.

In my capacity as the Director of Safety, I am responsible for my company's compliance program under the U. S. Department of Transportation's Motor Carrier Safety Regulations and Hazardous Materials Transportation Regulations.

I am familiar with the federal regulations, and with the CVSA out-of-service criteria, used by inspectors to determine which vehicles should be taken from service.

It is the experience of Rogers Cartage that the CVSA criteria are used as a regulation. Inspectors use the items written in the criteria as operative rules, not as mere guidelines. Accordingly, if an inspector finds a vehicle with an out-of-service item on the list, the inspector will take the vehicle from service, even if the vehicle does not constitute an imminent hazard to public safety. While the CVSA criteria include provisions on the exercise of discretion by the inspectors, in our experience they do not exercise discretion but apply the criteria rigidly.

We have had vehicles taken out of service when, in our view, it was more appropriate for safety that the vehicle be allowed to travel to an appropriate location for repairs. These have included hazardous materials vehicles, stopped in public locations.

Attached are several Commercial Driver/Vehicle Inspection Reports and related materials which demonstrate that the current CVSA out-of-service criteria are overly broad and are being applied to remove vehicles from service which do not constitute an imminent hazard to public safety:

Illinois Commercial Driver/Vehicle Inspection Report No. 7838 18: This report involves a driver, and thus his vehicle, being placed out of service due to the fact that his license had been suspended. The driver's license was suspended as a result of his not having proof of insurance for a motorcycle on which the driver had an accident. As explained in the attached letter dated February 24, 1998, the driver had been admitted to the hospital as a result of the accident and had submitted his proof of insurance to the State upon his release. The driver was unaware of the fact that his license was suspended. While the reason for the suspension of the driver's license had nothing to do with his fitness as a commercial driver, the vehicle was nonetheless placed out-of-service. This resulted in our having to have the vehicle towed to a safe location.

Missouri Driver/Vehicle Examination Report No. 873923: This report resulted in one of our trucks being placed out of service for an inoperative brake light, despite the fact that the light actually was working. The report also states that there was a small air leak at relay valve connection above axle #2, but as evidenced by the repair order, there was no air leak.

We have had a driver and his vehicle ordered out of service for failing to come to a complete stop at a railroad crossing.

We have had vehicles taken out of service for obscured placards, discolored placards, or one of the four required placards missing.

We have had vehicles ordered out of service, and then told by the inspector to proceed to an alternate location, risking our liability for moving a vehicle described by that inspector as being improper to move on the highways. Instead of exercising the discretion in applying the CVSA criteria to allow the move to a safe location, the criteria were applied rigidly to take the vehicle from service, and then to force the driver to continue to operate it unlawfully.

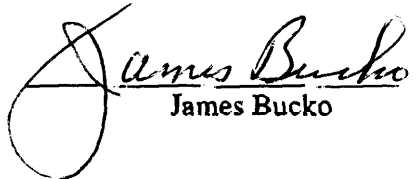
I am a member of the CVSA committee preparing these criteria. If the CVSA criteria were made the subject of notice-and-comment rule making, Rogers Cartage would submit comments seeking changes to some provisions. In particular:

- 1) The provisions for moving a vehicle to another location for repairs should be clarified;
- 2) The placarding provisions should be revised to take into account the reality that placards may become discolored or blow off of trucks in the normal course of business, especially in severe weather conditions;
- 3) The provisions relating to driver licenses (CVSA OOS Criteria Section 3) should be revised so that trucks are taken out-of-service only when permitting the driver to operate the vehicle would constitute an imminent hazard to public safety;
- 4) The "Steering Wheel Free Play" standards set out in Section 8 of the CVSA vehicle out-of-service criteria are within the standard tolerances for some vehicles and should be revised.

State of Illinois       )  
                                  )  
County of Crest wood )       SS:

**AFFIDAVIT**

**James Bucko**, being duly sworn, says: that be, **James Bucko** is responsible for the prepared affidavit attached hereto; that he caused such **affidavit** to be prepared; that the materials appearing therein are true to the best of his knowledge, information and belief,

  
James Bucko

Subscribed and sworn before me  
this 18th day of **September**, 1998.

  
Notary Public



My Commissions expires: 12-19-2001